

BLANCHE V. WHITE

IBLA 77-419

Decided March 30, 1979

Appeal from a decision of the Eastern States Office, Bureau of Land Management, dismissing a protest as to the awarding of oil and gas lease parcel ES 119, Serial No. ES 17092.

Reversed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Drawings

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: Sim B. Christy IV, Esq., Jennings, Christy & Copple, Rosewell, New Mexico, for appellant; James W. McDade, Esq., for respondent Robert L. Smith.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Blanche V. White appeals from the May 31, 1977, decision of the Eastern States Office, Bureau of Land Management (BLM), dismissing her protest regarding the awarding of the above-designated oil and gas lease parcel to Robert L. Smith.

Robert L. Smith used a filing service, Stewart Capital Corporation (Stewart), to enter his drawing entry card. His rubber stamp

signature was placed on card by an employee of Stewart Capital and his card was drawn first priority in a drawing held April 8, 1977.

In her protest to BLM, appellant stated that Smith's filing was in contravention of 43 CFR 3102.7, in that he did not reflect other parties in interest, and in violation of 43 CFR 3112.5-2, which proscribes multiple filing. 1/

BLM dismissed the protest on the ground that appellant had presented no competent evidence of an enforceable agreement by which the filing service would participate in the proceeds of the lease.

While the protest alleged a violation of the regulation against multiple filing, the thrust of the appeal asserts that Smith and Stewart failed to comply with 43 CFR 3102.6-1(a)(2) 2/ requiring the

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1/ This regulation provides in part:

"When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected."

2/ 43 CFR 3102.6-1(a)(2) provides:

"If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases

statements of offerors and their agents. Appellant asserts that Smith's drawing entry card should be rejected for failure to submit the required statements and for failure to disclose the agency relationship. Appellant also reasserts her belief that Stewart had an interest in Smith's offer to lease and that the regulation prohibiting multiple filings (43 CFR 3112.5-2) was violated.

Smith's response suggests that 43 CFR 3102.6-1(a)(2) applies only where an attorney-in-fact or an agent's own signature appears on the drawing entry card. Respondent affirms that Stewart is not the agent of any person subscribing to its services. <sup>3/</sup>

The issue is whether Smith is qualified to receive the oil and gas lease, since BLM may issue these leases only to the first qualified offeror. 30 U.S.C. § 226 (1976); 43 CFR Subpart 3102.

It is a fact of record that Smith's facsimile signature was stamped on his drawing entry card by an employee of Stewart. The file contains the following statement signed by Smith on June 15, 1977:

It was my intention that the rubber stamp used to place my signature on offer to lease # ES 17092 be my signature.

The rubber stamp signature was placed on the entry card with my permission by an employee of Stewart Capital Corporation, a service corporation with which I have a contract to perform this service for me. The corporation and its employees are my contract employees.

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fn. 2 (continued)

or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation."

<sup>3/</sup> On December 22, 1978, Smith submitted a supplemental response in which he states that the circumstances in the present case are, in all material respects, identical to those reviewed by the Board in D. E. Pack, IBLA 77-76, 38 IBLA 23, 85 I.D. 408 (1978), and other appeals listed by the Board in its order of December 8, 1978, referenced as IBLA 77-221, etc. Smith adopts and incorporates by reference all arguments made by Mr. Runnells in the Pack case and by the appellants in H. R. Delasco, Inc., et al, IBLA 77-221, etc., 39 IBLA 194 (1979).

[1] The Board has held that if the drawing entry card is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements by both the offeror and the agent must be filed regardless of whether he signs his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically. D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); J. A. Masek, 40 IBLA 123 (1979). The Board is familiar with Stewart's Federal oil land acquisition program and the manner in which it performs services for its oil and gas lease clients. See D. E. Pack, supra, and Ray H. Thames, 31 IBLA 167 (1977). The file in this case contains no information which would indicate that Stewart did not perform the same discretionary services for Smith as it did in Pack and Thames, supra, and the Board is satisfied that Stewart was acting as Smith's agent. Therefore, 43 CFR 3102.6-1 applied and required the filing of separate statements of interest by both Smith and Stewart. Though BLM did not specifically so rule, failure to submit such statements compels the rejection of Smith's offer.

Since appellant's entry card was drawn second, we direct BLM to issue the lease in question to her, all else being regular.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Frederick Fishman  
Administrative Judge

